

As Passed by the Senate

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Senator McColley

**Cosponsors: Senators Wilson, Jordan, Huffman, Terhar, LaRose, Coley,
Hoagland, Lehner, Eklund, Beagle, Balderson, Hackett, Obhof, O'Brien, Peterson,
Uecker**

A BILL

To enact sections 101.62, 101.63, 101.64, 101.65, 1
103.26, 103.27, 4798.01, 4798.02, and 4798.03 of 2
the Revised Code to establish a statewide policy 3
on occupational regulation, to require standing 4
committees of the General Assembly to 5
periodically review occupational licensing 6
boards regarding their sunset, and to require 7
the Legislative Service Commission to perform 8
assessments of occupational licensing bills and 9
state regulation of occupations. 10

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 101.62, 101.63, 101.64, 101.65, 11
103.26, 103.27, 4798.01, 4798.02, and 4798.03 of the Revised 12
Code be enacted to read as follows: 13

Sec. 101.62. (A) As used in sections 101.62 to 101.65 of 14
the Revised Code: 15

"Individual" means a natural person. 16

"Least restrictive regulation," "occupational license," 17
and "occupational licensing board" have the meanings defined in 18
section 4798.01 of the Revised Code. 19

(B) An occupational licensing board shall expire at the 20
end of the thirty-first day of December of the fifth year after 21
it was created or last renewed, or on December 31, 2023, 22
whichever is later. The expiration of an occupational licensing 23
board under this section emancipates a person to lawfully engage 24
in the profession, occupation, or occupational activity, which 25
has been previously licensed by that board, without an 26
occupational license, notwithstanding any law of the state that 27
requires a person to possess a license to lawfully engage in 28
that profession, occupation, or occupational activity. 29

(C) The director of budget and management shall not 30
authorize the expenditure of any moneys for an occupational 31
licensing board on or after the date of its expiration. 32

(D) The general assembly may provide by law for the 33
orderly, efficient, and expeditious conclusion of an 34
occupational licensing board's business and operation. The 35
orders, licenses, contracts, and other actions made, taken, 36
granted, or performed by the board continue in effect according 37
to their terms notwithstanding the board's abolition, unless the 38
general assembly provides otherwise by law. The general assembly 39
may provide by law for the temporary or permanent transfer of 40
some or all of an expired or abolished board's functions and 41
personnel to a successor agency, board, or officer. 42

The expiration or abolition of a board does not cause the 43
termination or dismissal of any claim pending against the board 44
by any person, or any claim pending against any person by the 45
board. Unless the general assembly provides otherwise by law for 46

the substitution of parties, the attorney general shall succeed 47
the board with reference to any pending claim. 48

(E) An occupational licensing board may be renewed by 49
enactment of a law that continues the statutes creating, 50
empowering, governing, or regulating the board. The amendment of 51
a statute creating, empowering, governing, or regulating a 52
board, between the time the board was last reviewed and the time 53
it is next scheduled to be reviewed does not change the next 54
scheduled review date of the board. The next scheduled review 55
date changes only if the amendment expressly so provides. 56

Sec. 101.63. (A) (1) Not later than the first day of March 57
of a calendar year during which an occupational licensing board 58
is scheduled to expire under section 101.62 of the Revised Code, 59
the president of the senate and the speaker of the house of 60
representatives each shall direct a standing committee of the 61
senate and of the house of representatives, respectively, to 62
hold hearings to receive the testimony of the public and of the 63
chief executive officer of the board, and otherwise to review, 64
consider, and evaluate the usefulness, performance, and 65
effectiveness of the board. 66

(2) The president of the senate and the speaker of the 67
house of representatives may, in the same manner as described in 68
division (A) (1) of this section, direct a standing committee to 69
review an occupational licensing board for which the director of 70
the legislative service commission, under section 103.27 of the 71
Revised Code, has performed a review. 72

(3) The president of the senate and the speaker of the 73
house of representatives shall direct standing committees to 74
review approximately twenty per cent of the occupational 75
licensing boards each year. All occupational licensing boards 76

shall be reviewed over a five-year period including calendar 77
years 2019 through 2023, and also during each subsequent five- 78
year period. 79

(B) Each occupational licensing board that is scheduled to 80
be reviewed by a standing committee shall submit to the standing 81
committee a report that contains all of the following 82
information: 83

(1) The board's primary purpose and its various goals and 84
objectives; 85

(2) The board's past and anticipated workload, the number 86
of staff required to complete that workload, and the board's 87
total number of staff; 88

(3) The board's past and anticipated budgets and its 89
sources of funding; 90

(4) The number of members of its governing board or other 91
governing entity and their compensation, if any. 92

(C) Each board shall have the burden of demonstrating to 93
the standing committee a public need for its continued 94
existence. In determining whether a board has demonstrated that 95
need, the standing committee shall consider, as relevant, all of 96
the following: 97

(1) Whether or not continuation of the board is necessary 98
to protect the health, safety, and welfare of the public, and if 99
so, whether or not the board's authority is narrowly tailored to 100
protect against present, recognizable, and significant harms to 101
the health, safety, and welfare of the public; 102

(2) Whether or not the public could be protected or served 103
in an alternate or less restrictive manner; 104

<u>(3) Whether or not the board serves a specific private</u>	105
<u>interest;</u>	106
<u>(4) Whether or not rules adopted by the board are</u>	107
<u>consistent with the legislative mandate of the board as</u>	108
<u>expressed in the statutes that created and empowered the board;</u>	109
<u>(5) The extent to which the board's jurisdiction and</u>	110
<u>programs overlap or duplicate those of other boards, the extent</u>	111
<u>to which the board coordinates with those other boards, and the</u>	112
<u>extent to which the board's programs could be consolidated with</u>	113
<u>the programs of other state departments or boards;</u>	114
<u>(6) How many other states regulate the occupation, whether</u>	115
<u>a license is required to engage in the occupation in other</u>	116
<u>states, whether the initial licensing and license renewal</u>	117
<u>requirements for the occupation are substantially equivalent in</u>	118
<u>every state, and the amount of regulation exercised by the board</u>	119
<u>compared to the regulation, if any, in other states;</u>	120
<u>(7) The extent to which significant changes in the board's</u>	121
<u>rules could prevent an individual licensed in this state from</u>	122
<u>practicing, or allow an individual licensed in this state to</u>	123
<u>practice, the same occupation in another jurisdiction without</u>	124
<u>obtaining an occupational license for that occupation in that</u>	125
<u>other jurisdiction;</u>	126
<u>(8) Whether the board recognizes national uniform</u>	127
<u>licensure requirements for the occupation;</u>	128
<u>(9) Whether or not private contractors could be used, in</u>	129
<u>an effective and efficient manner, either to assist the board in</u>	130
<u>the performance of its duties or to perform these duties instead</u>	131
<u>of the board;</u>	132
<u>(10) Whether or not the operation of the board has</u>	133

<u>inhibited economic growth, reduced efficiency, or increased the</u>	134
<u>cost of government;</u>	135
<u>(11) An assessment of the authority of the board regarding</u>	136
<u>fees, inspections, enforcement, and penalties;</u>	137
<u>(12) The extent to which the board has permitted qualified</u>	138
<u>applicants to serve the public;</u>	139
<u>(13) The extent to which the board has permitted</u>	140
<u>individuals to practice elements of the occupation without a</u>	141
<u>license;</u>	142
<u>(14) The cost-effectiveness of the board in terms of</u>	143
<u>number of employees, services rendered, and administrative costs</u>	144
<u>incurred, both past and present;</u>	145
<u>(15) Whether or not the board's operation has been impeded</u>	146
<u>or enhanced by existing statutes and procedures and by</u>	147
<u>budgetary, resource, and personnel practices;</u>	148
<u>(16) Whether the board has recommended statutory changes</u>	149
<u>to the general assembly that would benefit the public as opposed</u>	150
<u>to the persons regulated by the board, if any, and whether its</u>	151
<u>recommendations and other policies have been adopted and</u>	152
<u>implemented;</u>	153
<u>(17) Whether the board has required any persons it</u>	154
<u>regulates to report to it the impact of board rules and</u>	155
<u>decisions on the public as they affect service costs and service</u>	156
<u>delivery;</u>	157
<u>(18) Whether persons regulated by the board, if any, have</u>	158
<u>been required to assess problems in their business operations</u>	159
<u>that affect the public;</u>	160
<u>(19) Whether the board has encouraged public participation</u>	161

<u>in its rule-making and decision-making;</u>	162
<u>(20) The efficiency with which formal public complaints</u>	163
<u>filed with the board have been processed to completion;</u>	164
<u>(21) Whether the purpose for which the board was created</u>	165
<u>has been fulfilled, has changed, or no longer exists;</u>	166
<u>(22) Whether federal law requires that the board be</u>	167
<u>renewed in some form;</u>	168
<u>(23) An assessment of the administrative hearing process</u>	169
<u>of a board if the board has an administrative hearing process,</u>	170
<u>and whether or not the hearing process is consistent with due</u>	171
<u>process rights;</u>	172
<u>(24) Whether the requirement for the occupational license</u>	173
<u>is consistent with the policies expressed in section 4798.02 of</u>	174
<u>the Revised Code, serves a meaningful, defined public interest,</u>	175
<u>and provides the least restrictive form of regulation that</u>	176
<u>adequately protects the public interest;</u>	177
<u>(25) The extent to which licensing ensures that</u>	178
<u>practitioners have occupational skill sets or competencies that</u>	179
<u>are substantially related to protecting consumers from present,</u>	180
<u>significant, and substantiated harms that threaten public</u>	181
<u>health, safety, and welfare, and the impact that those criteria</u>	182
<u>have on applicants for a license, particularly those with</u>	183
<u>moderate or low incomes, seeking to enter the occupation or</u>	184
<u>profession;</u>	185
<u>(26) The extent to which the requirement for the</u>	186
<u>occupational license stimulates or restricts competition,</u>	187
<u>affects consumer choice, and affects the cost of services;</u>	188
<u>(27) An assessment of whether or not changes are needed in</u>	189

the enabling laws of the board in order for it to comply with 190
the criteria suggested by the considerations listed in division 191
(C) of this section. 192

For division (C) of this section, a government regulatory 193
requirement protects or serves the public interest if it 194
provides protection from present, significant, and substantiated 195
harms to the health, safety, and welfare of the public. 196

Sec. 101.64. The president of the senate and the speaker 197
of the house of representatives shall notify the chief of the 198
common sense initiative office, established under section 107.61 199
of the Revised Code, when a board is identified to be reviewed 200
by a standing committee under section 101.63 of the Revised 201
Code. The chief or the chief's designee shall appear and testify 202
before the standing committee, with respect to the board, and 203
shall testify on at least all of the following: 204

(A) Whether or not the common sense initiative office has, 205
within the previous five years, received commentary related to 206
the board through the comment system established under section 207
107.62 of the Revised Code; 208

(B) Whether or not the common sense initiative office has, 209
within the previous five years, received advice from the small 210
business advisory council with respect to rules of the board; 211

(C) Any other information the chief believes will 212
elucidate the effectiveness and efficiency of the board and in 213
particular the quality of customer service provided by the 214
board. 215

Sec. 101.65. (A) After the completion of the review of a 216
board under section 101.63 of the Revised Code, the standing 217
committee that conducted the review may prepare and publish a 218

report of its findings and recommendations. A standing committee 219
may include in a single report its findings and recommendations 220
regarding more than one board. If the standing committee 221
prepares and publishes a report, the committee shall furnish a 222
copy of the report to the president of the senate, the speaker 223
of the house of representatives, the governor, and each affected 224
board. Any published report shall be made available to the 225
public in the offices of the house of representatives and senate 226
clerks during reasonable hours. As part of a report, the 227
standing committee may present its recommendations to the 228
general assembly in bill form. 229

(B) Recommendations made by the standing committee shall 230
indicate how or whether their implementation will do each of the 231
following: 232

(1) Improve efficiency in the management of state 233
government; 234

(2) Improve services rendered to citizens of the state; 235

(3) Simplify and improve preparation of the state budget; 236

(4) Conserve the natural resources of the state; 237

(5) Promote the orderly growth of the state and its 238
government; 239

(6) Promote that occupational regulations shall be 240
construed and applied to increase economic opportunities, 241
promote competition, and encourage innovation; 242

(7) Provide for the least restrictive regulation by 243
repealing the current regulation and replacing it with a less 244
restrictive regulation that is consistent with the policies 245
expressed in section 4798.02 of the Revised Code; 246

<u>(8) Improve the effectiveness of the services performed by</u>	247
<u>the service departments of the state;</u>	248
<u>(9) Avoid duplication of effort by state agencies or</u>	249
<u>boards;</u>	250
<u>(10) Improve the organization and coordination of the</u>	251
<u>state government in one or more of the ways listed in divisions</u>	252
<u>(B) (1) to (9) of this section.</u>	253
<u>Sec. 103.26. (A) As used in this section and section</u>	254
<u>103.27 of the Revised Code:</u>	255
<u>"Individual" means a natural person.</u>	256
<u>"Least restrictive regulation" has the meaning defined in</u>	257
<u>section 4798.01 of the Revised Code.</u>	258
<u>"Occupational regulation" means a statute or rule that</u>	259
<u>controls an individual's practice of a trade or profession.</u>	260
<u>(B) With respect to legislation that has been introduced</u>	261
<u>in the house of representatives or in the senate, which proposes</u>	262
<u>to substantially change or enact an occupational regulation, the</u>	263
<u>director of the legislative service commission shall perform an</u>	264
<u>assessment of the legislation. The assessment shall attempt to</u>	265
<u>ascertain whether or not the regulatory scheme proposed in the</u>	266
<u>legislation is consistent with the policies expressed in section</u>	267
<u>4798.02 of the Revised Code with respect to proposing the least</u>	268
<u>restrictive regulation to protect consumers from present,</u>	269
<u>significant, and substantiated harms that threaten public</u>	270
<u>health, safety, and welfare. The director shall issue a report</u>	271
<u>of the assessment, to the general assembly, in a timely manner.</u>	272
<u>To the extent possible with readily available or</u>	273
<u>obtainable information, the assessment shall consider the</u>	274

<u>potential consequences of the legislation with respect to:</u>	275
<u>(1) Opportunities for employment within the occupation;</u>	276
<u>(2) Consumer choices and costs;</u>	277
<u>(3) Market competition;</u>	278
<u>(4) Cost to government.</u>	279
<u>(C) The assessment performed under division (B) of this</u>	280
<u>section shall include all of the following:</u>	281
<u>(1) A comparison of the regulatory scheme put forth in the</u>	282
<u>legislation with the current regulatory scheme in other similar</u>	283
<u>states for the same occupation and a consideration of the extent</u>	284
<u>to which significant changes in the board's rules could prevent</u>	285
<u>an individual licensed in this state from practicing, or allow</u>	286
<u>an individual licensed in this state to practice, the same</u>	287
<u>occupation in another jurisdiction without obtaining an</u>	288
<u>occupational license for that occupation in that other</u>	289
<u>jurisdiction;</u>	290
<u>(2) A comparison of the regulatory scheme put forth in the</u>	291
<u>legislation with the policy of this state as set forth in the</u>	292
<u>sections of the Revised Code governing the occupation that is</u>	293
<u>the subject of the legislation, if those sections include such a</u>	294
<u>policy.</u>	295
<u>(D) The sponsor of a bill, in order to assist the director</u>	296
<u>of the legislative service commission with the director's duties</u>	297
<u>under division (B) of this section, may submit to the director</u>	298
<u>any relevant information, including the following:</u>	299
<u>(1) Evidence of present, significant, and substantiated</u>	300
<u>harms to consumers in the state;</u>	301

(2) An explanation of why existing civil or criminal laws or procedures are inadequate to prevent or remedy any harm to the public; 302
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(3) An explanation of why a less restrictive regulation, that is consistent with the policies expressed in section 4798.02 of the Revised Code, is not proposed; 305
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(4) The names of associations, organizations, or other groups representing the occupation seeking regulation and the approximate number of members in each in this state; 308
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(5) The functions typically performed by members of this occupation and whether they are identical or similar to those performed by another occupation; 311
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(6) Whether specialized training, education, or experience is required to engage in the occupation and, if so, how current practitioners acquired that training, education, or experience; 314
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(7) Whether or not the proposed regulation would change the way practitioners of the occupation acquire any necessary specialized training, education, or experience and, if so, why; 317
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(8) Whether or not any current practitioners of the occupation in this state lack whatever specialized training, education, or experience might be required to engage in the occupation and, if so, how the proposed regulation would address that deficiency; 320
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(9) Whether or not new entrants into the occupation would be required to provide evidence of any necessary training, education, or experience, or to pass an examination, or both; 325
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(10) Whether or not current practitioners would be required to provide evidence of any necessary training, 328
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education, or experience, or to pass an examination, and, if 330
not, why not; 331

(11) The expected impact of the proposed regulation on the 332
supply of practitioners of the occupation and on the cost of 333
services or goods provided by the occupation; 334

(12) Information from others knowledgeable about the 335
occupation, and the related economic factors. 336

(E) A bill which proposes to substantially change or enact 337
an occupational regulation shall not be favorably reported out 338
of committee until after the committee members have received and 339
considered the assessment provided under division (B) of this 340
section, unless two-thirds of the members of the committee vote 341
in the affirmative to favorably report the bill. 342

Sec. 103.27. Each calendar year, beginning in 2018, the 343
director of the legislative service commission shall perform an 344
assessment of approximately twenty per cent of occupations 345
subject to regulation by the state. The assessment shall attempt 346
to ascertain whether or not the current regulatory scheme being 347
utilized in this state is consistent with the policies expressed 348
in section 4798.02 of the Revised Code. 349

The director shall issue a report of the assessments 350
performed during a calendar year, not later than the first day 351
of December of that year, to the general assembly and to the 352
attorney general. The report shall include instructions, as 353
necessary, which describe how the current regulatory scheme may 354
be amended to improve consistency with the policies expressed in 355
section 4798.02 of the Revised Code. 356

The director may require that information be submitted by 357
any department or board that regulates the occupation. 358

The director shall, over a five-year period including 359
calendar years 2018 through 2022, perform assessments of all 360
occupations subject to regulation by the state. The director's 361
assessment of an occupation may be scheduled to coincide with, 362
and be done in conjunction with, the review of an occupational 363
licensing board being done by a standing committee of the 364
general assembly under section 101.63 of the Revised Code. 365

Sec. 4798.01. (A) As used in this chapter: 366

"Certification" means a voluntary program in which a 367
private organization or the state grants nontransferable 368
recognition to an individual who meets personal qualifications 369
established by the private organization or state law. 370

"Individual" means a natural person. 371

"Lawful occupation" means a course of conduct, pursuit, or 372
profession that includes the sale of goods or services that are 373
not themselves illegal to sell irrespective of whether the 374
individual selling the goods or services is subject to an 375
occupational regulation. 376

"Least restrictive regulation" means the public policy of 377
relying on one of the following, listed from the least to the 378
most restrictive, as a means of consumer protection: market 379
competition; third-party or consumer-created ratings and 380
reviews; private certification; specific private civil cause of 381
action to remedy consumer harm; actions under Chapter 1345. of 382
the Revised Code; regulation of the process of providing the 383
specific goods or services to consumers; inspection; bonding or 384
insurance; registration; government certification; specialty 385
occupational license for medical reimbursement; and occupational 386
license. 387

"Occupational license" means nontransferable authorization 388
in law that an individual must possess in order to perform a 389
lawful occupation for compensation based on meeting personal 390
qualifications established by statute, or by a rule authorized 391
by statute. 392

"Occupational licensing board" means any board, 393
commission, committee, or council, or any other similar state 394
public body, and any administrative department enumerated under 395
section 121.02 of the Revised Code, and any agency, division, or 396
office of state government, that issues an occupational license. 397

"Occupational regulation" means a statute, policy, rule, 398
adjudication order, practice, or other state law requiring an 399
individual to possess certain personal qualifications to use an 400
occupational title or work in a lawful occupation. "Occupational 401
regulation" includes registration, certification, and 402
occupational license. "Occupational regulation" excludes a 403
business license, facility license, building permit, or zoning 404
and land use regulation, except to the extent those laws 405
regulate an individual's personal qualifications to perform a 406
lawful occupation. 407

"Personal qualifications" mean criteria related to an 408
individual's personal background and characteristics including 409
completion of an approved educational program, satisfactory 410
performance on an examination, work experience, other evidence 411
of attainment of requisite skills or knowledge, moral standing, 412
criminal history, and completion of continuing education. 413

"Registration" means a requirement to give notice to the 414
government that may include the individual's name and address, 415
the individual's agent for service of process, the location of 416
the activity to be performed, and a description of the service 417

the individual provides. "Registration" does not include 418
personal qualifications but may require a bond or insurance. 419

"Specialty occupational license for medical reimbursement" 420
is a nontransferable authorization in law for an individual to 421
qualify for payment or reimbursement from a government agency, 422
for providing identified medical services, based on meeting 423
personal qualifications established in law, which may be 424
recognized by a private company. 425

(B) For purposes of this chapter: 426

(1) The terms "certification" and "registration" are not 427
synonymous with "occupational license." 428

(2) The use of the words "certification" and "certified" 429
in other statutes to mean requiring an individual to meet 430
certain personal qualifications to work legally shall be 431
interpreted for the purposes of this chapter as requiring an 432
individual to meet the requirements of an "occupational 433
license." 434

(3) The use of the words "registration" and "registered" 435
in other statutes to mean requiring an individual to meet 436
certain personal qualifications to work legally shall be 437
interpreted for the purposes of this chapter as requiring an 438
individual to meet the requirements of an "occupational 439
license." 440

Sec. 4798.02. With respect to occupational regulation of 441
individuals, all of the following are the policy of the state: 442

(A) Occupational regulations shall be construed and 443
applied to increase economic opportunities, promote competition, 444
and encourage innovation. 445

(B) Where the state finds it is necessary to displace 446
competition, the state will use the least restrictive regulation 447
to protect consumers from present, significant, and 448
substantiated harms that threaten public health, safety, and 449
welfare. The policy of employing the least restrictive 450
regulation shall presume that market competition and private 451
remedies are sufficient to protect consumers. Where needed, 452
regulations shall be tailored to meet the predominate identified 453
need to protect consumers, as follows: 454

(1) If regulations are intended to protect consumers 455
against fraud, the appropriate state action shall be to 456
strengthen powers under deceptive trade practices acts. 457

(2) If regulations are intended to protect consumers 458
against unsanitary facilities and general health, safety, and 459
welfare concerns, the appropriate state action shall be to 460
require periodic inspections. 461

(3) If regulations are intended to protect consumers 462
against potential damages to third parties who are not party to 463
a contract between the seller and buyer, and other types of 464
externalities, the appropriate state action shall be to require 465
bonding or insurance. 466

(4) If regulations are intended to protect consumers 467
against potential damages by transient providers, the 468
appropriate state action shall be to require registration with 469
the secretary of state. 470

(5) If regulations are intended to protect consumers 471
against asymmetrical information between the seller and buyer, 472
the appropriate state action shall be to offer voluntary 473
certification. 474

(6) If regulations are intended to facilitate governmental reimbursement for providing medical services for an emerging medical specialty, the appropriate state action shall be to require a specialty occupational license for medical reimbursement. 475
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(C) An occupational regulation may be enforced against an individual only to the extent the individual sells goods and services that are included explicitly in the statute that defines the occupation's scope of practice. 480
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(D) Occupational regulations that are created by adopting national or international standards and that are substantially equivalent to the occupational regulations for that occupation adopted in at least forty-five United States states are deemed to be narrowly tailored and the least restrictive regulations. 484
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By establishing and executing the policies in this section, in concert with section 107.56 of the Revised Code, the state intends to ensure that occupational licensing boards and board members will avoid liability under federal antitrust laws. 489
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Sec. 4798.03. This chapter preempts any ordinance or other local law or regulation, which conflicts with or is inconsistent with any policy of the state expressed in this chapter, by any political subdivision that regulates an occupation that is also regulated by the state. 493
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